

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25971
Docket Number TD-25096

George S. Roukis, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of Extra Train Dispatcher T. A. Soper of the Escanaba, Michigan office for eight hours straight time pay for time lost on each of the dates of November 23, 28, and December 13, 1981 based on Rule 10."

OPINION OF BOARD: During the month of November, 1981, Claimant was regularly assigned to Relief Clerk Position No. 1 at Escanaba, Michigan. The position has bulletined rest days on Wednesday and Thursday, with assigned hours from 6:00 A.M. until 2:00 P.M., Friday, Saturday, and Sunday, and from 10:00 P.M. until 6:00 A.M., Monday and Tuesday. In addition, he was also the senior qualified Extra Train Dispatcher at Escanaba. From November 22, 1981 through November 29, 1981, with the exception of November 23 and 28, he protected a vacancy on Dispatcher Job 022, working 3:00 P.M. to 11:00 P.M.

It is the Organization's position that because the Federal Hours of Service Act requires that no Train Dispatcher shall be required or permitted to be on or remain on duty for more than 9 hours, whether consecutive or in the aggregate during any 24 hour period, Claimant was entitled to be compensated, consistent with Rule 10 of the Train Dispatcher's Agreement for the days (November 23 and 28) he was unable to work his regular Clerk's Position. It observes that this issue has been judicially disposed of in Third Division Award No. 23393, when the Board upheld a similar claim. Rule 10 reads:

"Loss of time on account of the Hour of Service Law, or in changing positions by direction of proper authority, will be paid for at the rate of the position on which service was performed immediately prior to such change. Time lost in exercising seniority will not be paid for."

Carrier contends the Organization has not cited any Rule under the BRAC Agreement which gives Claimant the right to work the Relief Clerk's position. It asserts that when an Employee worked another assignment and lost time because of the application of the Hours of Service Law, it was understood that he deemed himself unavailable for service on his regular assignment. Moreover, it argues that Rule 13 of the Train Dispatcher's Agreement controls in this instance since it is a specific rule and singularly applies to Extra Train Dispatchers. Under this rule, according to Carrier's construction, an Extra Dispatcher may be called and used when available, even if doing so requires the Employee to miss work as a Clerk.

Rule 13 reads:

"The number of extra train dispatchers on each seniority district will be restricted to one for each three assignments or fractions thereof (including chief train dispatcher positions.) The senior qualified extra train dispatcher will be called and used for extra train dispatcher service if available, without regard to loss of time in changing shifts."

In reviewing this case, the Board agrees with the Organization's position. Based upon a careful analysis of the juxtaposed relationship of Rules 10 and 13 of the Train Dispatchers' Agreement, we are not persuaded that Rule 13 was purposely intended to supplant Rule 10 when Extra Train Dispatchers were called and used. Rather we concur with the Organization's interpretative position that Rule 13 makes the Employee available, so that Carrier may not render him unavailable by holding him on his regular position in other service. Its practical effect is to insure that Extra Train Dispatchers would be available. Accordingly, consistent with our decision in Third Division Award No. 23393, where a similar fact pattern and closely worded rule were involved, we will sustain Claimant's position for the time lost on the Relief Clerk's position on November 23 and 28, 1981. The claim for time lost on December 13, 1981, was withdrawn during handling on the property.

FINDINGS; The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.